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# OBSERVATIONS ON THE SHILLUK OF THE UPPER NILE

## CUSTOMARY LAW: MARRIAGE AND THE VIOLATION OF RIGHTS IN WOMEN

*P. P. HOWELL*

IN a previous article on the Shilluk[1] I discussed the laws of homicide and the legal and ritual functions of the *reth* or King. An interpretation of Shilluk law and authority is not easy because, apart from early contacts with the peoples of the northern Sudan, they have been subjected to external influences and some kind of Government since the early years of the last century. These contacts began with cursory and not altogether happy encounters with the Turco-Egyptian Government which were followed by the establishment of a provincial headquarters at Kodok in 1867 under the authority of a *mudir*; later came the turbulent and dismal years of the *Mahdia* and finally the occupation by the present Government in 1898. It would be idle to suppose that the political system of the Shilluk has remained unaffected by these influences. The Shilluk are by reputation an exceptionally conservative people and certainly the effects of their relations with outsiders are, to the casual observer, hard to detect. Profound changes have taken place none the less, especially in the sphere of customary law, and these changes are undoubtedly gathering momentum.

By 'law' I mean simply those customary rules governing human relationships from which there has developed a body of rules classed as 'customary law' (sometimes 'native law and custom') administered under the Chiefs' Court Ordinance of 1931, and more or less consistently applied in the tribunals established by the Government.

These courts have now largely taken the place of the ultimate sanction for conformity with accepted rules of conduct, for the fulfilment of recognized duties and the composition of all disputes, which was formerly the resort to force by the injured party and his supporters. It is my opinion that the ordered indigenous administrative system of the Shilluk, so enthusiastically described by some writers, and the organized repressive measures alleged to have been undertaken by the *reth*, are not only exaggerated, but also, in part, derive from contacts with alien governments. At any rate it is more than probable that no system existed among the Shilluk whereby all wrongs were righted by the direct intervention of the *reth* and his representatives.

We are not here concerned with political systems, but with the nature of customary law as it is applied today. This law is at basis derived from customary procedures in which arbitration and compromise prevailed; but in recent years it has acquired a consistency, and in some cases a rigidity, probably unknown in the past. A body of case law has arisen from precedents made in the courts, and although some laws may derive from the direct intervention of the Administration, others are part of a purely spontaneous process. It is also noticeable that many claims now upheld

[1] 'Observations on the Shilluk of the Upper Nile: The laws of homicide and the legal functions of the *reth*.' *Africa*, xxii. 2, 1952. I am again indebted to the Sudan Government for permission to quote from official reports and to Mr. W. P. G. Thomson and Mr. J. L. Baker for comments and suggestions.

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in the courts are of a kind which in the past were mere matters of convention and usage and could not be defined as law even in the most extended definition of that term. The tendency is for the most intimate personal relationships to be governed by legal processes. This is a feature of the Nilotic world under the influence of modern administration which, while present among the Shilluk, is even more marked among Nuer and Dinka. There is a danger in this, because intervention in almost every sphere of human activity may tend to inhibit the normal readjustments which might otherwise naturally emerge to meet changing conditions. It is therefore all the more necessary to record something of present practice for comparison in later years.

The vast majority of cases which appear before the courts concern kinship obligations, marital relationships and the violation of rights in women. This article is therefore largely a description of the normal processes of marriage: the payment and distribution of bridewealth, divorce, and the infringement of legal rights in women. It is also in the nature of a commentary on previous articles published by Mr. M. E. C. Pumphrey and myself[1] on the subject of kinship and social organization among the Shilluk. From time to time reference is made to Nuer and Dinka institutions by way of comparison.[2] A few examples of actual disputes as heard and recorded in the Shilluk Courts are given in the text.

## Shilluk Social Structure

Shilluk society is divided into 'provinces', 'divisions' (*lak*), and 'settlements' (*podk*). These are territorial and political segments, but it is really only the settlement which has any permanent political significance. Each settlement has a common territory, the boundaries of which run at approximately right angles to the river. Such territory includes a section of the highland ridge which runs roughly parallel to the Nile and on which the permanent dwelling-houses and cattle-byres are built; a section of the river front (*toic*) which provides green grazing for the cattle when the river drops, and finally a more extensive section of the hinterland (*wak*) which is subjected to varying degrees of rain-flooding during the wet season but is dry and waterless for the rest of the year. Each type of land is essential for pastoral and agricultural activities according to the season, and the territorial segmentation of Shilluk country could not be arranged otherwise.

A settlement is an economic, political, and social unit, but is not a kinship unit since it contains representative lineages of several of the many Shilluk clans. Within the settlement there is, however, a tendency—not always effective for purely topographical reasons—for each lineage to occupy its own 'village'. Each village (*pac*) is made up of a number of 'hamlets' (also *pac*: pl. *myer*) which comprise several domestic units (*gol*), each such unit consisting of a group of dwelling-huts (*ot*) occupied by a man, his wives, and children. The village is therefore also a kinship unit and, as a general rule, the closer the territorial proximity, the closer the kinship relationship. Clans (described by giving the name of the founder with the suffix *kwa*, meaning 'descendants of') are patrilineal descent groups which are theoretically exogamous, though separation in space, coupled with considerable distance of relationship within the kinship structure, may allow modifications of this rule. The

[1] *Sudan Notes and Records*, vol. xxiv, 1941.

[2] The reader may consult the works of Professor Evans-Pritchard on the Nuer. The Dinka are less well documented.

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localized lineage within one settlement is certainly exogamous and there is also a bar to marriage into the maternal lineage. The clan, widely distributed in minor branches throughout Shilluk country, does not function as a corporate unit except at times of national festivals and then only in the sphere of ceremonial and ritual.

### Marriage and Marriage Laws

As with the Nuer and Dinka, marriage among the Shilluk is achieved by the performance of recognized social procedures and the payment of bridewealth in the form of cattle, sheep, and goats. Nowadays, cash may be paid in addition to or in lieu of cattle, but not frequently and not in large sums.[1] It must be emphasized from the start that the Shilluk do not possess anything like the number of cattle owned by the Nuer and Dinka,[2] and for this reason alone the number of beasts paid as bridewealth is lower. Among the Nuer and Dinka the average ranges from fifteen to forty head of cattle according to the prevailing condition of the herds. Among the Shilluk the number is fixed at ten head, and although there have been times when few Shilluk were able to pay this number, it has been retained rigidly for several generations despite attempts by the Administration to reduce it. With sheep and goats, which are paid in addition but do not have the same significance, there is no such rigidity. The number of these seems to vary according to the attractions of the bride, though prevailing economic conditions doubtless play their part.

There is much to be found on the subject of marriage in the writings of Hofmayr, Westermann, and Seligman,[3] though many statements are misleading. This summary account of Shilluk marriage laws is based largely on the writings, both published and unpublished, of M. E. C. Pumphrey[4] who not only took into account previous literature but, as an administrator in Shilluk country for several years, had better opportunities to investigate the legal aspect of the subject. These are supplemented by my own direct observations.[5]

#### *The Social Processes and Legality of Marriage*

Pumphrey says:

> The marriage tie creates an obligation to pay cattle, but it is not created by or dependent upon such payment. To render a union a marriage only two things are essential. First there must be no positive barrier (such as known consanguinity between the parties . . .) and secondly there must be an offer and an acceptance. The offer and acceptance are symbolised by the man offering the woman's *got*[6] a sheep (*dyel dhok*). Acceptance of this sheep signifies acceptance of the suitor. The marriage is then complete.[7]

This transaction, which is limited to the immediate family of the parties to the marriage, is followed by *tieng mogho* (the brewing of beer) and a wedding dance (*mogho thiek*) to which many persons are invited and which therefore serves to make the union widely known. It is not, however, strictly correct to say that the marriage is,

[1] The tendency to use cash in lieu of cattle is apparently increasing.

[2] Ratio of human to cattle population: Shilluk 1:0·25; Nuer 1:2·5 (highest recorded).

[3] See Bibliography of the Shilluk, given in a previous article (*Africa*, xxii. 2).

[4] Pumphrey, 'The Shilluk Tribe', *S.N.R.*, vol. xxiv, 1941.

[5] Based on field work carried out in 1937 and on an investigation and analysis of the marriages of one Shilluk lineage carried out in 1948. The results are to be published later.

[6] Family group and legal guardians.

[7] Pumphrey, op. cit., p. 25.

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even at this stage, complete. The husband has not yet acquired full rights in his wife and does not do so until the cattle payments (*kany*) are at least substantially complete. It is, however, unlikely that the bride's kinsmen will consent to the *mogho thiek* unless they are satisfied with the payments.

Theoretically, the wife will not take up residence with her husband until these payments have been made in full and in any case not permanently until her first child has been born.[1] The fact that during this transitional stage, when the wife is still living with her family, adultery is regarded as a less serious offence (*kwor kwobo nian giw*) than later when she is living with her husband (*kwor kwob cie dhano*), indicates that full legal rights in her have not yet passed to her husband. The girl is in fact only betrothed, though, as among the Nuer and Dinka, bethrothal carries with it a degree of legal union and certain rights. Though completion of cattle payments should coincide with change of residence, this is not often the case and frequently a man, tired of waiting and unable to find the final two or three head of cattle, elopes with his betrothed.[2]

Pumphrey also states:

> Thus the marriage tie is complete as soon as the proffered sheep has been accepted, the cattle payments being in the nature of a concomitant transaction. Accordingly children born after the marriage tie is complete are legitimate, irrespective of a possible deficiency in cattle payments. The criterion of legitimacy, a question often in dispute, is not the sufficiency of cattle payments, but the acceptance or otherwise of the proffered sheep.

Ultimately, however, a man's rights in his wife and his children must depend on the payment of cattle. Analysis of disputes over marriage payments show that unless these are sufficient to satisfy permanently the demands of the wife's kinsmen, the union is unlikely to last. This does not mean that the ten head of cattle required are always paid in full, but those owing remain as a debt in the second generation.

Thus it seems safe to assume that the *mogho thiek* should be regarded as the ultimate ceremony which marks not only the change of residence of the bride, but also the final transference of legal rights in her to her husband. In fact this will usually coincide with the payment of at least an acceptable proportion of the bridewealth cattle.

### *The Distribution of Bridewealth*

Pumphrey states that:

> Professor Seligman was at pains to discover how the cattle were divided among the relatives of the wife, and especially what was the share of the maternal uncle. In fact, only in the case already described does he receive anything; i.e. when he claims from the bridewealth of his niece such cattle as are in arrears from the marriage of his sister.[3]

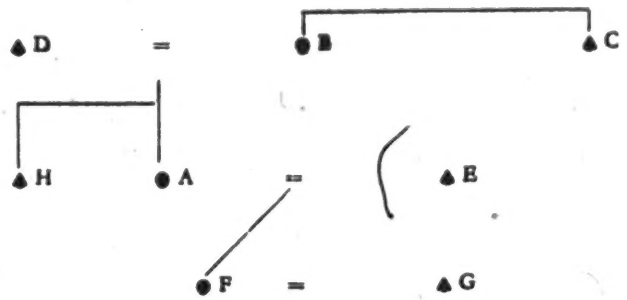
There is here, then, a very definite difference between the system of distribution of bridewealth among the Shilluk and that current among the Nuer and Dinka. Among the latter peoples, even in unions achieved by the transference of very small numbers of cattle, there must always be a definite portion set aside for the maternal kinsmen

[1] A further cow (over and above the ten head of cattle for bridewealth) is expected after the birth of the first child.

[2] This is not the same as the ceremonial and conventional abduction which forms part of the *mogho thiek* ceremonies. Pumphrey says: 'The *mogho thiek* . . . sometimes ends with the "violent" removal of the bride by the kinsmen of the bridegroom', op. cit., p. 28.

[3] Op. cit., pp. 28–29.

of the bride. Among the Shilluk no such obligation exists except in the form of a recognized debt, nowadays enforceable in the Courts, which is dependent on the number of cattle which remain outstanding in the bridewealth of the bride's mother.




Thus, in the diagram, from the bridewealth paid by *E* for *A*, no portion will be set aside for *C*, unless the full bridewealth of ten head of cattle was not paid by *D* on his marriage to *B*. Since few Shilluk can afford to hand over ten head of cattle at once, and because there have been periods when there were few cattle to pay, this is the source of much litigation in the courts. At the same time, such debts are not carried forward a further generation. Thus *C* could not claim cattle outstanding from *B*'s marriage on the marriage of *F*, though *H* might do so from the marriage of *A* to *E*.

The pattern of distribution among paternal kinsmen of the bride is relatively simple, which is perhaps natural when bridewealth stands at so low a figure. If alive, the bride's father's father should receive one cow (which would go to his sons by another wife); the bride's father's brothers (her paternal uncles) and even his half-brothers are also entitled to a share. Speaking in conventional terms only, Shilluk say that where a full brother (uterine) gets two cows, a half-brother only gets one. In fact none of them are likely to get anything more than a sheep or a goat, for if a man has many brothers and half-brothers there would be little or no cattle left for the bride's father or his sons. Distribution is usually dictated by circumstances prior to the marriage and the pattern of previous bridewealth distributions which create reciprocal rights. From an analysis of some fifty Shilluk marriages, my impression is that this form of distribution is quoted as a convention only and is rarely if ever followed now. As among other Nilotes, uterine and half-brothers within one domestic group are expected to marry in strict order of age. A man will generally expect to marry with the cattle brought in by the marriage of his younger uterine sister, if he has one, and, after any deductions which may be necessary to complete the bridewealth payments of the bride's mother and the fulfilment of other debts which may be pressing, he will probably get all the remaining cattle. Though large numbers of sheep and goats[1] are brought in by the marriage, these are not distributed among the bride's paternal kinsmen according to definite claims, nor are they regarded as paid to meet claims which could be interpreted as a survival from times when the

[1] The average seems to be somewhere between fifteen and thirty.

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Shilluk were perhaps more prosperous cattle-owners and the rates of bridewealth were higher.

There is in fact no evidence that the number of cattle paid as bridewealth was ever higher than ten, though it may have been so in the era preceding Turkish times. During the *Mahdia*, and for some time after, when the Shilluk had even less cattle than they have now, the transfer of more than two head as bridewealth seems to have been exceptional. But in the more prosperous period which followed, when cattle increased, there was an aftermath of claims dating back to marriages contracted at an earlier date. Some of these claims were upheld in the Courts established by the Government; a procedure which no doubt fostered the belief that the rate of ten head of cattle was unalterable and amounted to the enforcement of obligations which would not otherwise have been honoured. Latterly, the Administration has made attempts to reduce the bridewealth rate. At times in recent years, presumably after epidemics which have sometimes nearly halved the cattle population in the course of twelve months, ten head of cattle as bridewealth has been excessive, with varying results all naturally considered undesirable by the Administration. First, there has been a marked increase in litigation over bridewealth claims. Young men, having started the processes of marriage and made some initial payments of cattle, have then absconded with their brides and refused to honour further obligations. Second, since suitable husbands with sufficient cattle are not to be found, Shilluk girls, unable to marry the men of their choice, in an age when some degree of emancipation has been the result of alien government, tend to drift into the towns as concubines and prostitutes.[2] This process has an equally undesirable corollary. The young men, unable to marry, are more inclined to illicit love affairs, with the result that adultery has increased with a consequent rise in litigation. Finally, the Shilluk have taken to marrying their daughters to Nuer or Dinka who are easily able to find the ten head of cattle required. This process, though not necessarily undesirable in itself, has the effect of aggravating the position, because Shilluk men find it even harder to acquire wives. Without this absorption of Shilluk girls by intermarriage with other tribes or by the process of detribalization, their guardians might be prepared to accept smaller numbers of cattle as they undoubtedly did during the impoverished times of the *Mahdia*.

There have been many discussions, recorded in Government files, of the necessity for reducing the amount of bridewealth and it is clear that Shilluk chiefs and notables have themselves been acutely aware of the need to do so. Yet, despite resolutions made at Shilluk Council meetings, no alteration has in fact occurred.

*Divorce and the Dissolution of Marriage*

Divorce laws among the Shilluk are, in principle though not in detail, similar to those current among other Nilotic tribes. We must here distinguish between what may be called 'active divorce', when both parties are still living, and 'dissolution of legal union', which sometimes follows the death of the wife.

[2] Encouraged perhaps by the removal of customary deterrents. The 10th meeting of the Shilluk Council (1933) records: 'Chiefs are warned that the following customary "punishments" for a woman are forbidden and will be followed by imprisonment:
(1) Tying her up in a net and half drowning her.
(2) Tying her up outside at night for the mosquitos to bite her.
(3) Smoking her in a closed up house
(4) Sticking thorns up her finger nails.
The Government does not object to the lawful guardian of a woman or a girl giving her reasonable correction with the palm of his hand, or a light whip, but beating with a stick is also forbidden'

586 *Active Divorce*: This is simply known as *tag*: disputes over divorce which are frequently brought before the Courts being known as *gniey tag*.

(*a*) If *A* marries *B* with ten head of cattle (or less) and a divorce is instituted, all cattle should be returned to *A* with the exception of one cow (in the past two) known [684] as *kwor kwob*. The expression *kwor kwob* is used generally in reference to all kinds of sexual offences in which rights in women are violated and, as will be seen later, implies that compensation should be paid. Since the union is terminated and *A* has renounced his rights in his wife, the Shilluk say he must pay something for taking her virginity. It also refers to loss of domestic assistance in the home, for Shilluk sometimes say that this deduction is *kiec mac*, which comes to mean 'compensation for services rendered in the home' and it is not considered necessary if the union is dissolved before the wife takes up residence with her husband. This deduction is still made even if the wife is to blame.

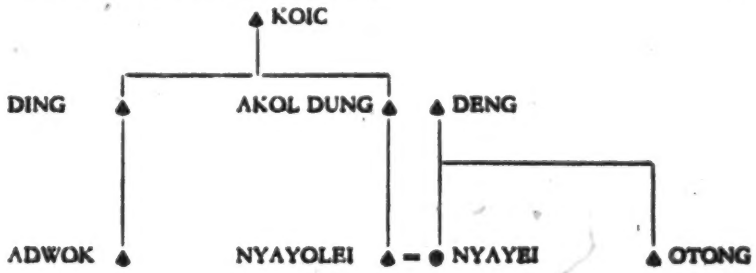
(*b*) *A* marries *B* and *B* produces children. Should a divorce follow, *A* can only claim return of his cattle after suitable deductions have been made for the children at the rate of five head of cattle for a girl and two for a boy. In such circumstances *kwor* [613] *kwob* or *kiec mac* would not be paid by the husband, who thus retains legal parenthood [848] of his children. Otherwise, as will be seen later, the children would become *okijo* (illegitimate) and belong to the wife's lineage.

586 Two examples show the way in which such disputes are nowadays dealt with by 69 the Courts.

Kak *wad* Banykwee *v.* Anyang *wad* Dwalo (1949)

[583] Kak married Anyang's daughter Nyabony for ten head of cattle, ten sheep and £Ea.$.100^m/_m$s. in cash. One child was born of the union and, at the time of dispute, was about three years old. Nyabony then eloped with another man and Kak claimed the return of his cattle and other bridewealth. Anyang had already paid everything back with the exception of two cattle which he claimed should stand as legitimization fees for the child. The Court, however, held that the legitimization fees were covered by the offspring of the original cattle which Anyang had not returned to Kak and which Kak was not in fact claiming. No deductions were deemed necessary as *kiec mac* was claimable by Nyabony's family in any case.

Adwok *wad* Deng *v.* Otong *wad* Deng (1949)




[583] Nyayolei (deceased) married Nyayei for eight head of cattle, sixteen sheep and goats, eleven baskets of grain and .$100^m/_m$s. in cash. The marriage took place in *reth* Padiet's time

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(*circa* 1915) Nyayei bore no children and ran away with another man. All the cattle have been returned since then, but not the sheep and the goats nor the grain. Adwok then claimed one bull in place of the grain. The Court in the final instance decided against Adwok on the grounds that no cattle as *kwor kwob* (*kirc mac*) had been retained by Otong and the sheep, goats, grain and cash must be held to represent them.

### *Dissolution of Marriage owing to the Death of the Wife*

This is known as *tug juok*.[1] Pumphrey says:

> Where a marriage is terminated by the death of the wife, her *gol* must either present to the husband an unmarried sister known as *kai ot*, or they must return the cattle (or their equivalent in similar animals), making deductions for the children born of the marriage and living at the time of their mother's death.[2]

This statement requires qualification:

(*a*) If the wife dies soon after marriage and without issue, all cattle should be returned to the husband or, in some cases, another girl from her family might be given to replace her. The Shilluk refer to this as *kai ot*, which, as Pumphrey states, means literally 'substitute of the house'.

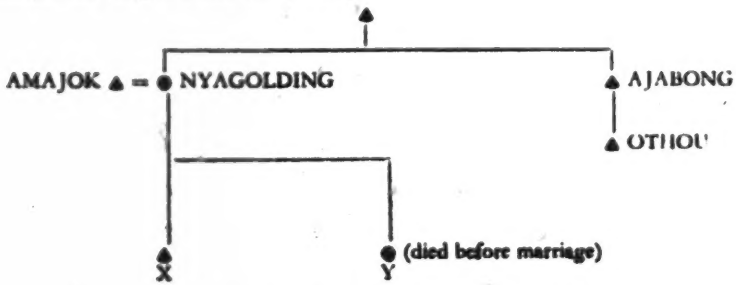
(*b*) If the wife dies a long time after marriage and after giving birth to children, thereby fulfilling her procreative obligations to her husband, *kai ot* may still be claimed, but is recognized as being only two head of cattle. *Kai ot* in this sense is intended to assist the husband to marry again, but it is often claimed, not by the husband, but by the wife's male children many years after her death. In fact, it frequently happens that a man claims *kai ot* on the death of his mother or of his father's wives. It is also a subject of frequent litigation in the Courts.

(*c*) If the wife dies in childbirth, the child dies too, and she leaves no other children, then all cattle should be returned with the exception of two known as *dhok wic dan* or *dhok remo*. *Dhok wic dan* means literally 'cattle in the place of children' while *dhok remo* means 'cattle of blood'.

It should be noted that the deduction known as *kwor kwob* would not be claimed in addition to *dhok remo*, and only applies if no children are born to the wife.

The following disputes settled before the Court provide examples:

Amajok *wad* Deng *v.* Othou *wad* Ajabong




[1] *Juok* means God: hence dissolution by act of God.
[2] Pumphrey, op. cit., p. 32.

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69 Amajok married Nyagolding for ten head of cattle and ten sheep. Nyagolding gave birth
586 to two children who died as adults, while she herself died some twenty-eight years ago. No cattle were returned to Amajok on her death and no claim was made so long as *X* and *Y* were living. Amajok now claims *kai ot* from Othou. This claim was upheld by the Court and two head of cattle awarded to Amajok. It is, as a matter of fact, unlikely that Amajok would have claimed *kai ot* if his daughter *Y* had lived and married, though *X* might have done so.

Anger *wad* Nyang *v.* Kanker *wad* Ming

[583] Anger married Kanker's sister, Aciethgwok, for eight head of cattle and five sheep. This was in *reth* Fadiet's time (*circa* 1909). Aciethgwok died in childbirth leaving no other children. Kanker returned six cattle and all the sheep. Anger (in 1949) then claimed the return of the remaining cattle. This claim, made some forty years after the event, was regarded by the Court as a frivolous one. It was held that the two head of cattle stood as *dhok remo*, to which Kanker had undisputable right.

586 *Kai ot* therefore has various meanings, the most precise being another daughter of
587 the dead wife's house handed over by her family as a 'substitute'. The custom is not
[613] confined to the husband as an individual, but applies to his kinship group, for Shilluk say that a girl might be handed over as *kai ot* even in a later generation, if no bride-wealth had been returned in the interim. Again, if the wife died after fulfilling her procreative obligations, her family might allow the widower to marry her sister at a reduced bridewealth (eight head of cattle instead of ten). This, however, is really only an application of the general rule that *kai ot* (here meaning a payment of cattle) can be claimed by a man from his maternal uncle when his mother dies, provided she dies
[571] at a ripe old age and has borne several children. In this sense *kai ot* does not depend on the termination of the union, but is rather confirmation thereof and is not paid unless the two lineages wish to maintain the close relationship which marriage in a
[198] previous generation has secured. This claim is now nearly always upheld in the Courts and provides an example of how a payment depending on a variety of circumstances has become enforceable at law.

*Further Rules Concerning Cattle Returnable on Divorce*

586 Shilluk sometimes say that in the old days on divorce all the original bridewealth cattle and all their offspring were returned. There is little evidence for this statement and the rule is certainly not applied today. The wife's kinsmen are not expected to return any cattle which have died in their possession, though they may be expected to produce the hides as evidence of death. On the other hand, cattle which have been sold for cash, slaughtered for meat, or paid in execution of debts (other than direct marriage) or as compensation for wrongs committed, must be replaced by substitutes.

Writing on this subject in 1935, Pumphrey says:

583 Cattle paid as marriage payments in Shilluk country are an exact substitute for cash in that
586 they are treated as negotiable instruments. A claim for the identical cows when, owing to divorce or death, the marriage payment is reclaimed, is never supported. Cattle paid are in fact usually negotiated immediately, just as cash. The recipient will almost invariably pay the cattle away either in satisfaction of his debts or else in the marriage of one of his near male relatives.[1]

[1] Pumphrey: from unpublished records.

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An analysis of Shilluk marriages has shown that many cattle which should be retained for bridewealth to be used by the bride's male kinsmen are, in fact, frequently paid away as debts, or slaughtered, or sold to obtain cash in times of famine. This is perhaps natural among the Shilluk, who have to place greater reliance on an agricultural economy, but whose agricultural activities are no more productive or reliable than are those in other parts of the Nilotic area.[1]

Pumphrey goes on to say,

> accordingly it seldom occurs that, owing to the death of all the original marriage cattle, the wife's relatives become interested in the breaking up of the marriage. Possibly as a safeguard against this very contingency the Shilluk have a custom which compels the bridegroom, during the first three or four years of his marrige, to replace by living cattle any of the original cattle he paid as bridewealth which may die in the interim.[2]

It is not clear, however, at what stage of marriage the bridegroom is absolved from this responsibility. Some Shilluk say that it no longer applies when the marriage is finally confirmed by the birth of a child and the bride's change of residence.

Pumphrey adds that:

> it is a natural corollary of all this, that the progeny of the marriage cattle are not reclaimed. The claim is for a roughly equivalent amount of cattle. This amount will vary according to the number of children borne to the man by the wife.[3]

*The Legitimacy of Children*

With regard to the legitimacy of children in case of divorce, we hear that, 'the children born of the dissolved marriage are legitimate irrespective of the smallness of the cattle payments and of the fact that the marriage was short-lived'.[4] Pumphrey mentions, not here but later, that a certain number of cattle must remain with the wife's family if the ex-husband is to retain legal parenthood of these children. If these deductions are not made, the children are automatically classed as *okeijo*.

On this subject Pumphrey says,

> If the wife had produced sufficient children to wipe off the whole bridewealth, the husband will be entitled to receive nothing upon the termination of the marriage, except that . . . if the marriage has been broken through his wife's bad behaviour the husband may be awarded the return of at least a part.[5]

My own investigations lead me to believe that this statement is incorrect, at any rate according to the principles of Shilluk law, for although a husband may be so exasperated by the conduct of his wife as to demand return of all his bridewealth cattle, he can only do so by waiving all legal rights in the children of the union, and he is unlikely to do this.

Among the Shilluk these questions arise principally in connexion with subsequent rights in the bridewealth cattle of a daughter. The question of nomenclature, impor-

[1] Crop production in Shilluk country is unreliable and erratic because the soil on the high ground in the immediate vicinity of the villages is exhausted, while the land in the hinterland is subject to flood owing to poor drainage.

[2] Pumphrey: unpublished records.

[3] Ibid.

[4] Pumphrey, op. cit., p. 26.

[5] Ibid., p. 33.

8:Howell E-4.8 (1937, 1948) 1953 FJ23 Shilluk FJ23



tant among the Nuer and Dinka, does not usually arise. The Shilluk seem to attach greater significance to physical paternity than do other Nilotes and the *okijo* male will usually be linked to the name of his *gwitor*, even though this carries with it no legal rights. In the case of males there is often a tendency on the part of the maternal uncle or his heirs to deny to the *okijo* rights of inheritance or full participation in the reciprocal privileges of the lineage, so that his status is sometimes precarious and indeterminate.

Unlike the Nuer and Dinka, the Shilluk have no 'Ghost-Marriage'.[1] It is not stated as a fundamental obligation of kinship that a wife should be 'married to the name' of a dead kinsman, though the sentiment which dictates the custom among the Nuer and Dinka is not absent among the Shilluk. In this sense the Nuer and Dinka system is perhaps more individual than that of the Shilluk. Among the Shilluk continuity of the kinship group, not of the individual, is assured by normal legal marriage with cattle which might well have been used by the deceased for this purpose, but are not transferred in his name. Names are retained, however, by a belief in reincarnation. It is believed that the spirit of some ancestor appears in the new-born child which is then named after the ancestor. At the birth of every child a ceremony is performed, usually with the assistance of a *bag reth* who specializes in such matters, to determine this. The participants will ask, '*men akal yi min*?—'This one is brought by whom?' This accounts for the repetition of names in Shilluk genealogies, irrespective of sex, since there is no reason why the spirit of a female ancestor should not enter a male child or vice versa.

As will be seen later, a man who seduces a girl, if she subsequently gives birth to a child, cannot assume legal parenthood of his offspring except by marrying the mother and then only if at least some of the bridewealth cattle have been transferred, and the initial processes of marriage performed before the child is born. Theoretically, at least, children born out of wedlock cannot be legitimized and must therefore remain *okijo*. This does not apply if the father is betrothed to the girl at the time, provided that he eventually completes the marriage payments. It often happens, however, that a child born in these circumstances is adopted by the man who subsequently marries the mother, and marriage in these conditions usually brings with it legal parenthood of children born out of wedlock.

## Violation of Rights in Women

### *Seduction of Unmarried or Betrothed Girls and Adultery*

**The seduction of unmarried girls is accounted a serious wrong among the Shilluk and one which demands compensation. The wrong is referred to as *kwar kwob nian gwr* and compensation is assessed, both currently and traditionally, at one ox. Pumphrey remarks that,**

> **. . . an original seduction often eventuates in marriage, in which case the seduction payment is payable first and the marriage payment after (and over and above it). In such cases also marriage dates from the acceptance of the sheep and it is improbable that the girl's family will accept it until the seduction payment is completed.[2]**

[1] See Evans-Pritchard: 'Some Aspects of Marriage and the Family among the Nuer', *Zeitschrift fur Vergleichende Rechtswissenschaft*, 1939 and Rhodes-Livingstone Inst. 1948.

[2] Pumphrey: unpublished records.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ2



This also applies to a girl who (on Pumphrey's definition) is already technically married, but still living in her father's home. The seduction of a girl in this condition (which I prefer to call betrothal) by an outsider is not considered a more serious offence than seduction of a girl who has not been bespoken. In such circumstances, too, the compensation is the recognized right of her father or legal guardian and not of her so-called husband. It is true that the latter will usually be expected to collect the compensation and to take action either directly or through the agency of the Courts, but he will ultimately hand over the ox to the girl's father. Seduction of a girl in these circumstances is not therefore adultery in the legal sense.

Seduction, whether of an unbetrothed or of a betrothed girl, if followed by pregnancy, is considered a more serious offence and demands a higher rate of compensation, which again is claimed as the right of the girl's father. This is known as *kwor yar nian ajur* and is nowadays fixed at three head of cattle.[1] Again, in the case of an unbetrothed girl, her own kinsmen will take action, but if the girl is betrothed, her future bridegroom will take up the matter on behalf of her family.

An act of adultery with a wife (in the full legal sense) demands an indemnity of two head of cattle (*kwor kwob cie dhano*) payable to her husband.

The impregnation of a married woman (in the full legal sense) is a much more serious offence and the recognized compensation is four head of cattle[2]—*kwor yac cie dhano* or *kwor yac cie ot*. The cattle are claimed by the woman's legal husband who will retain them unless there is a divorce, in which case they go to her kinsmen. In fact they would be deducted from the cattle which the wife's kinsmen should return to the husband on divorce and it is unlikely that he would hand them over, especially if they had been paid a long time before.[3]

If a divorce follows the offence the child will normally become *okelo* (unless legitimization fees are paid) and will be brought up by its mother's kinsmen. Otherwise, children born of adultery belong to the legal husband, even if the wife leaves him to live with her lover.

### *Adultery with the Wives of Kinsmen*

As among other Nilotic tribes, the exaction of compensation usually depends on the relationship between the husband and the woman's lover. Pumphrey says,

> No *kwor* is payable where a man has relations with the wife of his brother or his father. In fact, little resentment is felt in such cases, especially if the offender is unmarried, the realistic view prevailing that it is better so than that he should incur cattle payments by exploits elsewhere.

This statement is substantially correct, though it must be realized that it does not imply that there is anything in the nature of the right of access to each other's wives by close kinsmen.[4] It is forbidden for two (uterine) brothers to cohabit with the

[1] Shilluk say that it was seven head in the time of *rwāt* Kur (1901).

[2] Shilluk say that the number demanded in the past was eight.

[3] Unlike the Nuer and Dinka, there is no limit to the number of times a man may demand compensation for the adultery of his wife. Moreover, if several men are concerned, compensation is demanded in full from each. This does not apply if a child is born, as here only one man can be held responsible, and it is said that the woman will sometimes be prevailed upon to name the richest of her lovers.

[4] As suggested by Hofmayr.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23



same woman and to do so would result in spiritual calamity and actual sickness (*dwale*) for which ritual expiation would be necessary, even though an indemnity would not be claimed. This spiritual bar does not apply to half-brothers though again no compensation would be expected. Immunity from the payment of compensation for adultery extends also to paternal cousins and agnatic kinsmen farther removed in the kinship structure. The extent is variable—a link four to five generations back may still give immunity—but it appears that common residence in one hamlet or one settlement is a factor of importance. Shilluk say that this theoretical relaxation of the law of adultery is less commonly accepted than in the past and that compensation is more frequently demanded. This may be due to the fact that legal machinery is now available for the settlement of such claims, though presumably public opinion in the matter is expressed in the judgements of the Courts. Moreover, the network of obligations to assist relatives in the payment of compensation of this sort was cast wider in the past. Hence, theoretically at any rate, those who would receive compensation might well be those upon whom lies the obligation to assist in its payment. The two obligations thus cancel each other out.

The following court case illustrates the procedure.

Ajak *wad* Fadiet *v.* Awow *wad* Awingjok (*kwor kwob nian ajur*)

Awow seduced Landeng, daughter of Akiec *wad* Nyaljok. Landeng was at the time betrothed to Ajak, who had paid nine head of cattle and thirty-six sheep. She had not, however, taken up residence with Ajak at the time of the offence and, since no child resulted, only one bull is claimable. The Court awarded Ajak one bull which will be handed over to Landeng's brother, since Ajak himself has no legal claim to it.

Akoc *wad* Agiu *v.* Tsytung *wad* Deng (*kwor yar nian ajur*)

Tsytung impregnated Nyandongkal (daughter of Bilnyang, brother of Agiu) and she produced a girl-child. She was subsequently married to Ajing Amikwei for a full bridewealth of ten head of cattle. The baby, however, remains with her maternal uncle and is *ditjo*. Her maternal uncle has full rights in the child and will receive the bridewealth on her marriage. Neither her mother's husband nor her physical father have any rights in her at all. This case was brought before the Court merely because Tsytung had not completed the compensation payment which he was ordered to do. (He had, in fact, only paid two out of the three.)

Onak *wad Maydong v.* Dogeng *wad* Ajwin (*kwor yar tie dhum*)

Dogeng seduced Onak's sister Agwer. She was at the time betrothed to one Bul Ayuil, but was living at home. A boy was born to Agwer after she had taken up residence with Bul, by then her legal husband. For this reason, the child (though actually dead) is considered to belong to Bul, though the compensation is claimed by Onak. The case was brought to the Court simply because Dogeng had paid no compensation which he had previously been ordered to pay by instalments. No dispute over legal paternity of the child or over the compensation cattle had arisen. Had the child lived (especially if it had been a girl-child) Onak might have claimed legal rights in it, though the ruling here, as we have seen, is that providing the child was actually born after the woman had taken up residence with her husband it should belong to him. In fact, the child was born a considerable time after Agwer had taken up residence with Bul. Otherwise the case might have been classed as *kwor yar nian ajur* and assessed at only three head of cattle.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23



*thiep*

One other offence which is recognized by the Shilluk and is also known to Nuer and Dinka is *thiep*. This refers to fornication with a woman who is pregnant or lactating. Should the woman abort the child, or the child die subsequently, four head of cattle are claimed. This applies, of course, only to married women and in effect means that a man must pay four head of cattle for adultery where in other circumstances he would only pay two.

*Sexual Offences Concerning Female nyiriths*

It is a rigid rule among the Shilluk that no female *nyireth*[1] may marry or indeed have sexual relations with any man. It is possible that in the past they were more strictly guarded and deterrents in the form of severe punishment were more rigidly applied.

Seligman says,

> . . . the daughters of a king must remain unmarried, the alleged reason for this being that it is unfitting that the daughter of a king should marry a commoner, while she could not marry a *nimri* (king's son) since this would be incest. The prohibition of marriage does not, however, extend to all intercourse; a king's daughter is allowed to select lovers as she chooses, and nothing is said so long as it is not publicly known that she has become pregnant; but if this were discovered she would be killed, as would also the man responsible for her condition. This rule, which until recently appears to have been sternly carried out, led to frequent production of abortion.[2]

This rule is still insisted on by the *reth*, though clearly it is ineffective nowadays since *nyiriths* have become something of a problem to the Administration. Writing in 1946, Thomson says that female *nyiriths* can be divided into two classes: (*a*) those who cohabit with Police and 'Malakia' (detribalized urban elements) and (*b*) those who live in Shilluk country.

The former class appears to be numerous, and has gained notoriety owing to its pursuing its trade largely in Malakal. I believe it forms a small minority of female *nyiriths*. Some of them live faithfully with their unmarried husbands, others are more flighty and others again are prostitutes. As long as these *nyiriths* remain in Malakal or Kodok they are merely objectionable on moral grounds.

The latter class is a menace to tribal society. Their habits are similar to the female *nyiriths* who consort with 'Malakia', but in this case the 'husband', being of Shilluk blood, feels bound by tribal custom and its distortions. The tribal custom appears to be that the first time a female *nyireth* becomes pregnant the lover has to pay ten head of cattle (*kwor*) to the *reth*. In the old days it was held to be a disgrace for a female *nyireth* to give birth and abortion was frequently practised. The ten head of cattle to the *reth* would not be objectionable, if it could be looked on as bride-price (which it is not). If this were so, the *reth* would have a personal interest in the fidelity of the *nyireth*, as the bride-pgice would, of course, be returnable on divorce. It would be right that this bride-price should go to the *reth* as being either father of the girl or *in loco parentis*.

This custom has, I think, largely fallen into contempt and I doubt whether the number of cattle reaching Fashoda amounts to very much. This does not mean that the lot of the

[1] *Nyireth*, daughter or son of a *reth*.

[2] Seligman, e.g. 'The Cult of Nyakang and the Divine Kings of the Shilluk'. *Report of the Wellcome Tropical Research Laboratories*, Khartoum, 1911, p. 218.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23



lover is any less hard. In place of a recognised tribal fine or compensation he is now a victim of blackmail. The *nyirath* whom he is living with proceeds as follows 'Give me a cow or I will tell.' This may go on until the lover's capital is exhausted and the *nyirath* with her child or children moves on in search of further prey. The lover has no redress as the whole arrangement is outside tribal custom, and the *nyirath* prospers from her blackmail and promiscuity.[1]

I do not propose to discuss here the reasons for the bar against marriage or sexual intercourse with the daughters of reigning or former *reths*. I have sometimes heard Shilluk say that compensation for illicit intercourse with any woman of the royal clan should really go to the *reth*. There is, however, an obvious distinction between offences committed with daughters of *reths* and with other females of the royal clan. In the first case, all forms of sexual union are barred and any infringement of the rule is a crime against the *reth* himself and all he stands for. Moreover female *nyireths*, not being allowed to marry, are in a sense males. Hence sexual relationship with them by a male amounts to perversity and perversity is not a mere private delict but a spiritual offence likely to react upon society as a whole. Shilluk say that theoretically the *nyirath* and her lover should be put to death, but the offence is now compoundable by payment of a fine. The principles of punishment and expiation are involved, not merely restitution. In the case of all other female *kwareth*, the offence lies not in the fact of sexual relationship, but in an illicit relationship amounting to an infringement of rights which apply to all members of Shilluk society. The wrongdoer pays the indemnity in order to right that wrong. In accepting compensation for offences against other women of the royal clan the *reth* is acting as the recognized head of that clan and has a right to receive and redistribute (which in fact he usually does) the wealth which belongs to the clan collectively. The former is therefore more nearly a criminal or public offence, the sanctions being penal, while the latter is a private delict involving the restitutory sanction only. It is worth noting that a closer study of this subject might well lead to a clearer picture of the spiritual functions of the *reth* himself and through him of the royal clan, and also to a more reliable interpretation of his legal functions.

## Conclusion

We may conclude by noting that Shilluk marriages have not the complexity, found both in the social processes and the transfer and distribution of bridewealth, which characterizes unions among their Nuer and Dinka neighbours. The principles are, however, comparable. Marriage is achieved by the performance of ceremonies which have both social and ritual aspects. Side by side with these ceremonies is the payment of bridewealth in cattle, goats, sheep, and sometimes cash. Neither is complete without the other and, generally speaking, each stage in the ceremonies is accompanied by further payments of cattle. The *mogho thiek*, the ultimate ceremony of marriage which corresponds approximately to the Nuer *mut* and the Dinka *thok de thiek*, at any rate in its legal implications, will not be performed unless sufficient cattle have already been paid to satisfy the kinsmen of the bride. Conversely, the payment of cattle would not legalize the union without the accompanying ceremonies.

[1] W. P. G. Thomson: unpublished records, 1946.

8:Howell E-4,5 (1937, 1948) 1953 FJ23 Shilluk FJ23



Though there are differences of detail in the matter of divorce, the general principles are again similar and both the legality of marriage and the legal status of children are established by the same method, the transfer of cattle being the material symbol of the transfer of legal rights. As elsewhere in the Nilotic world, litigation over rights in marriage and parenthood is common in the Shilluk courts; not that the rights and obligations are in dispute but rather that persons refuse to honour them. It is also possible to trace the gradual development and crystallization of custom and usage into customary law now consistently enforced by Shilluk tribunals established by the present Government.

There are also points of contrast. The most obvious of these is the rigidity with which the amount of bridewealth is fixed. Among Nuer and Dinka, where the ratio of cattle to humans is generally higher, the number of cattle claimed in bridewealth is greater but it is also more elastic and, provided certain minimum claims are met, will fluctuate according to the prevailing condition of the herds. By sticking permanently to a fixed number, even a comparatively small one, and regarding any cattle outstanding as an almost perpetual debt, the Shilluk marital system is the cause of many social maladjustments, some of which have already been described. These difficulties may well be aggravated if the population increases while the herds continue to be depleted by epidemics of rinderpeste or trypanosomiasis.

*Résumé*

NOTES SUR LES SHILLUK DU HAUT NIL: DROIT COUTUMIER: MARIAGE ET DROITS SUR LES FEMMES

Les mariages chez les Shilluk sont effectués par l'exécution de plusieurs cérémonies ayant une importance tant sociale que rituelle, qui sont accompagnées par le transfert de bétail représentant le paiement du mariage. Le transfert de bétail figure, également, dans les actions de divorce et détermine le statut légal des enfants, car il constitue le symbole du transfert des droits légaux. Ces caractéristiques des droits de mariage chez les Shilluk sont également rencontrées parmi les Nuer et les Dinka, bien qu'il y ait des différences de détail, plus particulièrement en ce qui concerne la répartition, parmi les parents, du bétail qui constitue le paiement du mariage. De plus, la quantité de bétail représentant ce paiement, parmi les Shilluk, est toujours de dix têtes, et les arrérages en suspens sont reportés quelquefois à perpétuité. Ceci est une cause fréquente d'inadaptation sociale et de litige, et les difficultés qui en résultent sont susceptibles d'être aggravées par l'accroissement de la population et l'épuisement des troupeaux par suite de maladie.